



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 18, 1998

Ms. Tenley Aldredge  
Assistant County Attorney  
County of Travis  
314 W. 11<sup>th</sup> Street, Suite 300  
Austin, Texas 78767

OR98-2747

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119582.

The Travis County Sheriff's Office (the "sheriff") received a request for "the complete copy of the sheriff's investigation report plus any other reports which is [sic] part of the investigation" into the disappearance of William Crumpacker. You indicate that the sheriff has or will release most of the requested information, but you seek to except certain information from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. You have supplied the responsive documents with the information you seek to withhold highlighted. We have considered the exceptions you raise and the subject information.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law. This confidentiality protection applies to information protected by common-law privacy. Information must be withheld from required public disclosure under common-law privacy if it meets the two pronged test articulated by the Texas Supreme Court in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), to wit:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 343 (1982) (information revealing that a particular individual suffers from severe emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

With respect to medical information, common-law privacy does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983). This office has determined that the following information is excepted from disclosure by common-law privacy: the fact that a person broke out in hives as a result of severe emotional distress, Open Records Decision No. 470 (1987), the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987), and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). *See also* Open Records Decision No. 422 (1984) (regarding emotional or mental distress).

As the above cited *Industrial Found.* ruling makes clear, to be excepted from disclosure on privacy grounds, information must be **both** "highly intimate" **and** "not of legitimate concern to the public." In the instant case, the subject information concerns a missing person and the legitimate investigation into the circumstances of that person's disappearance. We are of the opinion that these circumstances create a legitimate public concern that is sufficient to overbalance the privacy interest in much of the information sought to be withheld. The submitted information must be released unless made confidential by some other provision of law.

The submitted information includes medical records that are subject to Section 5.08 the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. This statute provides in pertinent part:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent

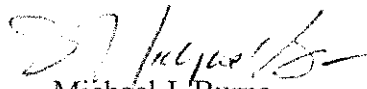
that disclosure is consistent with the authorized purposes for which the information was first obtained.

Access to medical records is not governed by chapter 552 of the Government Code, but rather by the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990). We have marked the information in the submitted documents that is subject to the MPA (see page 34 of exhibit A). The department may only release this information in accordance with the MPA.

Turning to section 552.130 of the Government code, we note that this section excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. As this information is considered confidential, you must withhold driver's license numbers, VIN numbers, and license plate numbers pursuant to section 552.130. The respective information has been marked and must not be released (see Exhibit B, pages 1, 3, 5, 7, 39, 50, 52, and 53 as highlighted).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 119582

Enclosures: Marked documents

cc: Ms. Gail Drake  
Aetna Life Insurance Company  
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(w/o enclosures)